IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
A.O. No. 456 of 2004.

Mahendra S/o Narayan Das
R/o Baintwala Tehsil Kashipur,
District Udham Singh Nagar …Appellant.

Versus

1-Smt. Shanti Devi W/o Ram Avtar
Maheshari R/o Moh. Ojhan, Kashipur,
District U.S. Nagar (Owner of Motorcycle
Hero Honda No. U.A. 06/7384)

2-National Insurance Company Ltd.
Branch Office, Station Road,
Kashipur, District U.S. Nagar ….Respondents.

Sri Dharam Veer Sharma, Senior Advocate, for the appellant.
Sri D.S. Patni, learned counsel for the Insurance Company.

Coram: Hon'ble P.C. Verma,J.
Hon'ble B.C. Kandpal, J.

Dated: June 14, 2006.

Present appeal from order, U/S 173 of the Motor Vehicles Act, has been preferred against the judgment and award dated 29-9-2004, passed by M.A.C.T./ Addl. District Judge, II F.T.C. U.S. Nagar, in MACP No. 233 of 2002 Mahendra Vs. Smt. Shanti Devi and another, whereby the claim petition was dismissed.

2- Briefly stated the facts of the case are that on 27-8-2002 the claimant Mahendra along with his brother Deva was going to the house of his relative situate in Durga Colony, Kashipur. At about 10-30 P.M. in the night at the main gate of Old Anaj Mandi near Railway Crossing the Hero Honda Motorcycle No. U.A.06/7384 came there with rash and negligent and dashed the claimant Mahendra. Due to this accident Mahendra sustained grievous injuries. Brother of the injured brought him to Government Hospital, where seeing the precarious condition of the injuried the doctors referred him to Sri Sanyee Hospital Moradabad. The first information report of the accident was sent to S.S.P. U.S. Nagar by registered post on 3-10-2002. The claimant has alleged that he has spent about Rs. One lac on his treatment, medicines, conveyance etc. It was also alleged that the claimant was doing the work of

agriculture and the profession of selling the milk. In this way claim petition for award of compensation of Rs. Five lacs was filed.

3- The O.P. Smt. Shanti Devi filed her W.S. and alleged that she is the owner of Motorcycle No. U.A.06/7384 and the said Motorcycle was insured with National Insurance Company at the time of the accident. She also alleged that on the day of accident the Motorcycle was being driving by its driver Bharat Bhusan Juneja who was possessing a valid driving licence. The owner of the offending Motorcycle has denied the accident. It was also alleged that the Insurance Company is liable to pay the compensation.

4- The Insurer of the Motorcycle has filed its W.S. on the ground that the owner of the Motorcycle did not observe the compliance of Section 64-BB of the Insurance Act. No report about the accident was lodged at the Police Station and the claim petition has been instituted by the claimant with collusion of its owner. Copies of Insurance, D.L. Registration etc. have not been filed along with the claim petition.

5- On the basis of pleadings of the parties the Tribunal filed the following issues:-

1- Whether on 27-8-2002 at about 10-30 P.M. at the main gate of Anaj Mandi, near Railway Crossing within P.S. Kashipur, the accident occurred due to rash and negligence of Motorcycle UA 06- 7384, in which claimant Mahendra sustained grievous injuries? If so, its effect?.

2- To what amount of compensation the claimant is entitled to get?.

3- Any other relief, the claimant is entitled to get?.

6- In support of claim petition the claimant filed copy of F.I.R., R.C., Insurance Cover Note and also filed various bills/cash memos with regard to purchase of medicines. The claimant also produced himself as P.W.1, Deva as P.W.2 and Saurabh Kaushik as P.W.3. The Opp.Parties filed affidavit of D.W.1 A.S. Rathore in support of their contentions and also filed some documents.

7- The Tribunal on assessment of evidence on record came to the conclusion that the claimant has not been able to prove that Motorcycle No. UA. 06/7384 was involved in the so called accident. Hence dismissed the claim petition.

8- Feeling aggrieved by the dismissal of the claim petition, the claimant/appellant has come up in appeal.

9- We have heard the learned counsel for the parties and perused the record.

10- The record reveals that the Tribunal has dismissed the claim petition firstly on the ground that the claimant Mahendra has not deposed in his statement that his brother Deva was with him at the time of the accident and therefore the deposition of P.W.2 Deva, who has been produced by the claimant as an eye witness, does not inspire confidence. The finding recorded by the Tribunal appears to be completely perverse and against the record. The statement of Mahendra shows that he had gone to Durga Colony Kashipur along with his brother Deva. This witness has further deposed that while going to Kashipur, he met with an accident with a Hero Honda Motorcycle No. U.A. 06/7384 with the result he sustained grievous injuries and his brother Deva took him to Hospital. P.W.2, Deva has also stated in his deposition before the Tribunal that he was going along with his brother Mahendra to Kashipur and on the way Mahendra met with an accident by the Motorcycle No. U.A. 06/7384. This witness has further deposed that he took his brother Mahendra to Hospital.

11- The another ground on which the claim petition has been dismissed by the Tribunal is that the first information report in this case is highly belated as the accident took place on 27-8-2002 while the first information report to the Superintendent of Police was sent on 3-10-2002. It has further been observed by the Tribunal that delay in lodging the first information report indicates that neither the claimant/injured nor his brother Deva Knew about the registration number of the Motorcycle and after due deliberation the Motorcycle number was indicated in the report.

12- It is settled principle of law that in deciding the accident cases pertaining to the claim compensation the first information

report is not at all essential. Although the first information report is a corroborative piece of evidence and it is helpful for the claimant to establish the factum of the accident but in case if the first information report is not lodged even then the case has to be decided on the basis of the evidence adduced by the claimant. The claim petition in the instant case discloses the number of the Motorcycle. The claim petition also discloses this fact that the report was sent to Superintendent of Police by registered post on 3-10-2002. The deposition of P.W.1 and P.W.2 reveal that the witnesses have deposed before the Tribunal that the brother of the injured Deva had gone to the Police Station for lodging the first information report but the police refused. Therefore, the report was sent to the Superintendent of Police by registered post on 3-10-2002.

13- For the reasons stated above, we are of the view that the Tribunal has not correctly assessed the evidence on record and dismissed the claim petition without appreciating the evidence on record in accordance with law. Therefore, we are of the view that the impugned judgment and order dated 29-9-2004 is liable to be set aside.

14- Accordingly the appeal is allowed. The impugned judgment and order dated 29-9-2004 passed by the MACT/Addl. District Judge/II F.T.C., U.S. Nagar in MACP No. 233 of 2002 is set aside. The matter is remanded back to the M.A.C.T. concerned with the direction that the Motor Accident Tribunal shall decide the claim petition afresh after assessing the evidence on record as well as providing an opportunity to the learned counsel for the parties of being heard.

(B.C.Kandpal, J.) **(P.C. Verma, J.)**

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